IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1126 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VISHNU DAYAL RAYSINHSAN - Appellant(s)
Versus
STTE OF GUJARAT - Opponent(s)

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Appearance :
MR US BRAHMBHATT for the Appellant.
MR ND GOHIL, APP, for Respondent-State.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 21/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The appellant came to be tried and convicted for offence of murder of Brij Bhan Tilak Kurmi, allegedly, committed by him on 15th July, 1995, at about 19.30 hours, at Indiranagar HUDCO, Ahmedabad, by learned Additional Sessions Judge, Ahmedabad (Rural), by judgment and order dated 26th November, 1996, in Sessions Case No.215 of 1995.

2. As per the prosecution case, the appellant and the deceased were staying in the same room. On the day of the incident, it is alleged that the appellant, while the deceased was sleeping in the room, committed an assault on him with knife and caused with it multiple injuries on various parts of his body which, ultimately, resulted into the death of the deceased. As per the prosecution case, the appellant was seen lastly in the company of the deceased by Narayan Punaji. Thereafter, neighbours Kiritbhai Amarsinh, Manjulaben Dasharathlal and Kiranben Rameshbhai, upon learning about the incident, rushed to the place, where it is

alleged that the deceased made an oral dying declaration before them implicating the appellant. It is also the case of the prosecution that Kiranben rushed to witness Ravindranath Goswami, who is the brother-in-law of the accused and informed about the incident, who, in turn, lodged a First Information Report. On the basis of the F. I. R., offence was registered and case investigated. During the course of investigation, Executive Magistrate, Trikambhai Purshottambhai was summoned to record dying declaration of the deceased, which he did. There was discovery of weapon by the accused in presence of Panch witnesses. Postmortem was got performed and, ultimately, the police having found sufficient evidence against the appellant, filed charge sheet in the Court of learned Metropolitan Magistrate. The case came to be committed to the Court of Sessions and Sessions Case No.215 of 1995 came to be registered. Accused pleaded not guilty to the charge and came to be tried and, ultimately, convicted for the offence of murder and was sentenced to undergo imprisonment for life and to pay a fine of Rs.2000/- and, in default, to undergo simple imprisonment for two years. Aggrieved by the said judgment and order, present appeal is preferred.

3. Learned Advocate, Mr. U. S. Brahmbhatt, appearing for the appellant submitted that the case depends on circumstantial evidence. There are no eye-witnesses to the incident. Witnesses, Manjulaben Dasharathlal (Exhibit 25), Kiritbhai Amarsinh (Exhibit 26) and Kiranben Rameshbhai (Exhibit 42) claimed that the deceased made an oral dying declaration implicating the appellant. However, if their depositions are seen, witnesses-Manjulaben and Kiritbhai do not support the prosecution case. Mr. Brahmbhatt submitted that even the first informant-Ravindranath Goswami (Exhibit 6) has also not supported the prosecution case. The prosecution evidence, therefore, remains in the form of oral dying declaration before Kiranben (Exhibit 42) and a dying declaration recorded by Executive Magistrate-Trikambhai, who is examined at Exhibit 29. Mr. Brahmbhatt submitted that the dying declaration before the Executive Magistrate does not inspire any confidence for the reason that the deceased is alleged to have sustained number of injuries on his hands and the hands were bandaged. Under these circumstances, the deceased could not have signed the dying declaration purported to have been made before the Executive

Magistrate.

3.1 Mr. Brahmbhatt submitted that, so far as evidence of Kiranben is concerned, it is the case of the prosecution that Kiranben rushed to first informant, Ravindranath Goswami, and informed him about the involvement of the appellant in the incident. But Ravindranath Goswami does not support the prosecution case and does not corroborate Kiranben about she having informed him about involvement of the appellant and, therefore, that evidence also should not believed.

3.2 Learned Advocate, Mr. Brahmbhatt, submitted that there was no motive for the appellant to cause death of the deceased. The prosecution case becomes doubtful because, at one place, it is alleged that the appellant used a knife and at another place, it is indicated that it was a dagger and, therefore, the appeal may be allowed and the judgment and order recording conviction of the appellant may be set aside.

4. Learned Additional Public Prosecutor has opposed this

appeal. According to him, the first informant is the brother-in-law of the appellant and has turned hostile. Witnesses-Manjulaben and Kiritbhai have also turned hostile. But evidence of Kiranben and Executive Magistrate-Trikambhai are consistent with each other. Trikambhai is an independent witness. He is a Government Officer and has no axe to grind against anyone. He has no reason to falsely implicate the appellant. No material is on record to show that the dying declaration recorded by the Executive Magistrate cannot be relied upon. In this set of circumstances, the Trial Court was justified in recording conviction and, therefore, the judgment and order may be confirmed and the appeal may be dismissed.

5. We have examined the record and proceedings in light of the submissions made before us. We find that the prosecution has examined following witnesses :-

(1) P.W.1-Ravikanth Balchandgiri Goswami (Exhibit 6).

(2) P.W.2-Natwarlal Ambalal Raval (Exhibit 9).

(3) P.W.3-Narayan Punaji (Exhibit 13).

(4) P.W.4-Nizamuddin Maiyuddin (Exhibit 14).

(5) P.W.5-Sikandar Shikh Husainbhai (Exhibit 16).

(6) P.W.6-Lavkashbhai Bhagwanbhai (Exhibit 18).

(7) P.W.7-Rameshbhai Pratapbhai (Exhibit 19).

(8) P.W.8-Bharatkumar Dhanjibhai (Exhibit 20).

(9) P.W.9-Vijayram Rupram (Exhibit 23).

(10) P.W.10-Manjulaben Dasharathlal (Exhibit 25).

(11) P.W.11-Kiritbhai Amarsinh (Exhibit 26).

(12) P.W.12-Trikambhai Purshottambhai (Exhibit 29).

(13) P.W.13-Pinakin Madhusudan Acharya (Exhibit 32).

(14) P.W.14-Smt. Jayashri Anil Shah (Exhibit 34).

(15) P.W.15-Dr. Ganesh Pyarelal Gebekar (Exhibit 38).

(16) P.W.16-Mukesh Nandshankar Joshi (Exhibit 41).

(17) P.W.17-Kiranben Rameshchandra (Exhibit 42).

(18) P.W.18-Baldevbhai Lavjibhai (Exhibit 43).

(19) P.W.19-Bhagwanbhai Ghemabhai (Exhibit 44).

(20) P.W.20-Dalpatsinh Himatsinh Parmar (Exhibit 47).

(21) P.W.21-Ratsinh Becharsinh Chavada (Exhibit 49).

(22) P.W.22-Manuji Bhavanji Vaghele (Exhibit 50).

6. We have perused the evidence closely. There is no

dispute about the fact that the deceased met with a homicidal death. We find that the first informant, P.W.1-Ravindranath Goswami, examined at Exhibit 6, is the brother-in-law of the appellant. This witness has not supported the prosecution case and has been treated as hostile witness. According to him, witness-Kiranben came and informed him that some unknown person had assaulted deceased-Brij Bhan and she did not know the name of the assailant. This witness says that, when he reached the place of incident, the deceased was lying in a puddle of blood in an injured condition and he was not able to speak. He says that Brij Bhan had become unconscious and never regained consciousness till he died and did not speak.

7. Against this, if evidence of Kiranben Rameshbhai is seen, she does not say that she went and informed Ravindranath about the incident. According to her, on learning about the incident, she went to the place of incident and found Brij Bhan lying there in a bleeding condition. She says that he had sustained injuries on both the palms, both the feet, neck, chest and all over the body. She says that muddamal article No.7-knife was lying

there and, on asking, Brij Bhan told her that Vishnudayal, i.e. the present appellant, had caused the injury. The witness said that the deceased was in a conscious state. The light in the room was on. She says that, she then told Ravindranath to bring a rickshaw and went home as she had young children to look after. The witness has been cross-examined, but nothing in favour of the accused turns on it. It appears from her cross-examination that the aspect of the oral dying declaration given by the deceased implicating the appellant has not been questioned at all. The cross-examination spins around some contradictions and improvements which are of little significance, once the factum of oral dying declaration is not disputed.

7.1 On examining deposition of Trikambhai Purshottambhai (Exhibit 29), it is clear that he received Yadi (Exhibit 30) asking him to record dying declaration of deceased-Brij Bhan. It appears that the said Yadi contained an endorsement of the doctor that the patient is conscious, co-operative and well oriented. This endorsement was put at 1.20 P.M. on 16th July, 1995. On the basis of that Yadi, he went to the hospital, got in touch with the doctor

and then recorded the dying declaration. The deceased told him that, while he was sleeping in his house at about 6.00 P.M. Vishnudayal, i.e. the appellant, came to him and started inflicting injuries firstly on his legs. He, therefore, started raising shouts. The appellant then inflicted injuries on his face, neck and other parts of the body. The deceased also told that while trying to protect himself, he sustained injuries on his fingers. There was no dispute with the appellant, but the assault was committed by the appellant to show bravery and to earn name. Witness-Trikambhai says that the declarant was not able to speak Gujarati and, therefore, questions were put to him in Hindi and the replies given by him were translated into Gujarati while recording the dying declaration (Exhibit 31). The witness says that after the declaration was recorded, he obtained opinion of the doctor and the doctor put his endorsement at the bottom of the dying declaration (Exhibit 31). During cross-examination, the witness said that he did not remember as to whether the deceased had bandages on both the hands and over all the fingers. He denied the suggestion that no such declaration was ever made by the deceased before him.

7.2 We have examined the Yadi (Exhibit 30) and the Dying Declaration (Exhibit 31). We find that both contain endorsement of the doctor about conscious state of mind of the deceased and the deceased being co-operative and well oriented.

8. Learned Advocate for the appellant could not point out any defect either in the method or procedure of recording of the dying declaration nor could he indicate what the deceased declared could not have been correct. We also do not find any material to suspect the dying declaration of being untruthful or to be defective because of any lapse in the procedure of the recording dying declaration by the Executive Magistrate.

9. When there are two dying declarations made, one of which was made immediately after the incident and the other made on the next day of the incident, which are otherwise found to be reliable, lack of direct evidence or want of support of other witnesses (Manjulaben and Kiritbhai), in whose presence oral dying declaration was made, would be of no help to the appellant. This would not render the evidence of other witnesses unreliable. The

Executive Magistrate has no reason to falsely implicate the appellant by creating or fabricating a false dying declaration. The only ground that required us to test the reliability of the dying declaration was that the postmortem notes indicate that, hands of the dead body was bandaged. It was, therefore, contended that the deceased could not have put signature on the dying declaration (Exhibit 31). However, we find from medical evidence that only three fingers were injured and were bandaged. The deceased, therefore, could have put signature. That apart, if the signature of the deceased on Exhibit 31 is seen, it is written in a manner which would indicate that it was written with discomfort and, again, we have no reason to doubt the Executive Magistrate, who says that he obtained signature of the deceased.

9.1 Though the first informant states that Kiranben (Exhibit 42) came to him and told him that she did not know who attacked the deceased, version of Kiranben is not that she went to the first informant. This does not seem to us to be omission/contradiction/ improvement in her version as there is no cross-examination on this aspect through other contradictions are put to her. Not much

weightage or credence can be given to the version of the first informant who has not supported the prosecution case.

10. The weapon has been discovered by the appellant in presence of Panch witness. This evidence would be an additional factor, which would strengthen the prosecution case.

11. We are, therefore, of the opinion that with these strong pieces of evidence on record, the Trial Court could not be said to have committed an error in recording conviction of the appellant. The other pieces of evidence not supporting the prosecution case would pale into insignificance against these strong pieces of evidence. We, therefore, find no merit in the appeal. The appeal must fail and is dismissed. Judgment and order of conviction and sentence of the Trial Court is hereby confirmed.

12. Before parting, we may record that, as per the report received from prison authorities, the appellant is absconding since 16th June, 1999, while he was on furlough. The State may take appropriate steps to ensure that he undergoes the remaining

sentence.

[A. L. DAVE, J.]

[BANKIN M. MEHTA, J.]

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